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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0260**

State of Minnesota,
Respondent,

vs.

Josiah Kemaris Taylor,
Defendant,

Absolute Bail Bonds, Inc.,
Appellant.

**Filed August 19, 2019
Reversed and remanded
Schellhas, Judge**

Hennepin County District Court
File Nos. 27-CR-16-27611, 27-CR-17-18719

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Christopher E. Freeman, Assistant
County Attorney, Minneapolis, Minnesota (for respondent)

Scott A. Neilson, Henson & Efron, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Tracy M. Smith, Presiding Judge; Schellhas, Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges a district court's denial of its petition for reinstatement and discharge of three forfeited bail bonds. We reverse and remand.

FACTS

In October 2016, respondent State of Minnesota charged Josiah Taylor with two counts of ineligible person in possession of a firearm.¹ On October 24, the district court granted Taylor conditional release with bail in the amount of \$40,000, and appellant Absolute Bail Bonds, Inc. (ABB) posted a \$40,000 appearance bond to secure Taylor's future appearance in court (first bond). On July 28, 2017, the court revoked Taylor's conditional release subject to additional bail in the amount of \$1,000. ABB posted a \$1,000 appearance bond (second bond). In connection with a separate criminal complaint, the court then granted Taylor conditional release with bail in the amount of \$50,000. On August 2, ABB posted a \$50,000 appearance bond to secure Taylor's future appearance in court (third bond). The court scheduled a trial on February 26, 2018. On that day, Taylor asked to proceed pro se and then failed to appear in court on February 28. The court therefore ordered the forfeiture of ABB's three bonds.²

¹ The state did not participate in the bail-forfeiture proceedings in district court and has not participated in this appeal.

² ABB posted a fourth bond on December 21, 2017, in connection with another criminal case involving Taylor. Although the district court also forfeited that bond because of Taylor's failure to appear on February 28, 2018, and although that bond also is the subject of an appeal, this court denied ABB's motion to consolidate that appeal with the present appeal.

On April 1, 2018, 31 days after Taylor failed to appear, law-enforcement officials apprehended him. On May 15, ABB petitioned the district court for reinstatement and discharge of its three bonds and requested a hearing. ABB averred in the affidavit supporting its petition that, although it did not know of Taylor's whereabouts, it maintained cellphone contact with Taylor and his mother during the month of March 2018, encouraging Taylor to turn himself in and researching his location while preparing to send a bounty hunter to apprehend and produce him. Without scheduling a hearing on ABB's petition, the court denied the petition in a September 5 order, concluding that ABB failed to provide "a sufficiently detailed account of [its] attempt to locate and secure" Taylor.

On September 25, 2018, counsel for ABB asked the district court by letter to reconsider its denial of ABB's petition for reinstatement and discharge and to provide ABB an opportunity to present oral argument. Construing ABB's letter as a request for permission to move for reconsideration, the court granted the request on October 11, ordered ABB to file a motion for reconsideration by October 25, and ordered ABB to include "specific details pertaining to the efforts and expenses incurred by [ABB] while attempting to secure [] Taylor's appearance." On October 17, ABB's counsel submitted a lengthy letter to the court, asking the court to reinstate ABB's bonds or "otherwise provide ABB an opportunity for oral argument." One of ABB's owners acknowledged "under penalty of perjury that all facts stated" in the letter were true and correct.

On October 23, 2018, the district court sent an e-mail to ABB's counsel, stating: "If you have requests of the court pertaining to these cases, please file them as motions in the format provided for by the Rules of Criminal Procedure." On November 13, 2018, ABB

filed a motion to reconsider. On November 16, the court denied the motion for failing “to comply with the Court’s October 25, 2018 filing deadline for a Motion to Reconsider.”

This appeal follows.³

DECISION

We “review a denial of a petition for reinstatement of a forfeited bail bond for abuse of discretion.” *State v. Askland*, 784 N.W.2d 60, 62 (Minn. 2010). “A district court abuses its discretion when it bases its conclusions on an erroneous view of the law.” *Id.* “By accepting a premium and agreeing to act as surety, a bond writing company undertakes to ensure that a defendant will personally appear to answer the charges against him.” *State v. Williams*, 568 N.W.2d 885, 888 (Minn. App. 1997), *review denied* (Minn. Nov. 18, 1997). “When a person in a criminal prosecution is under bond . . . to appear and answer . . . and fails to perform the condition of the bond, the default must be recorded.” Minn. Stat. § 629.58 (2018). “The penalty for default is forfeiture of the amount of the bond to the court.” *State v. Storkamp*, 656 N.W.2d 539, 541 (Minn. 2003). But a district court “may forgive or reduce the penalty” on a forfeited bond “according to the circumstances of the case and the situation of the party on any terms and conditions [the court] considers just and reasonable.” Minn. Stat. § 629.59 (2018).

³ In its notice of appeal, ABB included the district court’s November 16, 2018 order denying ABB’s motion to reconsider. We note that an order denying a motion to reconsider is not appealable. *See Baker v. Amtrak Nat. R.R. Passenger Corp.*, 588 N.W.2d 749, 755 (Minn. App. 1999) (concluding that motion to reconsider is not an appealable order under Minn. R. Civ. App. P. 103.03).

In *In re Shetsky*, 60 N.W.2d 40 (Minn. 1953), the supreme court identified four factors (the *Shetsky* factors) to “guid[e] the exercise” of a district court’s discretion in considering to reinstate a bond. *Askland*, 784 N.W.2d at 62. The *Shetsky* factors are: (1) “the purpose of bail, the civil nature of the proceedings, and the cause, purpose and length of a defendant’s absence”; (2) “the good faith of the bond company as measured by the fault or willfulness of the defendant” in not appearing; (3) “the good-faith efforts of the bond company to apprehend and produce the defendant”; and (4) “any prejudice to the State in its administration of justice.” *Id.* A bonding company has the burden of proving the first three *Shetsky* factors, while the state has the burden “to prove any claimed prejudice.” *Id.*

In this case, citing *State v. Vang*, 763 N.W.2d 354 (Minn. App. 2009), the district court noted that the surety bears the burden of proving “a justification for a mitigation of forfeited bail” and found that:

[ABB]’s argument fails to provide the Court with a sufficiently detailed account of the attempt to locate and secure [Taylor]. [ABB] admits to notifying [Taylor] about the bench warrant, but ultimately relied on [Taylor] to turn himself in. [ABB] maintains that it had regular communication with [Taylor], but was nevertheless unable to locate his whereabouts. [ABB] provides no specific information regarding its investigatory efforts or expenses and further supports its argument by claiming that “it was about to send out its bounty hunters.” Such intent is moot. [ABB] failed to provide the Court with sufficient details and expenses regarding its efforts to secure [Taylor]’s reappearance.

The court addressed the third *Shetsky* factor but did not address the first, second, and fourth *Shetsky* factors. We conclude that the court placed too much weight on the third *Shetsky* factor without considering the other *Shetsky* factors.

First Shetsky factor: purpose of bail

Bail serves “a dual purpose” of “relieving the accused of imprisonment and relieving the state of the burden of detaining him pending his trial.” *Storkamp*, 656 N.W.2d at 541. The supreme court has “determined that the bail statutes are remedial and should be interpreted liberally to ensure that their purpose is accomplished.” *Id.* Section 629.58 encourages “sureties to locate, arrest, and return defaulting defendants to the authorities to facilitate the timely administration of justice.” *Id.* at 542.

Here, the purpose of bail was frustrated when Taylor failed to appear in court on February 28, 2018, and then remained at large for 31 days without ABB ultimately producing him. But the Minnesota Supreme Court has fully reinstated bail bonds when defendants were at large for a greater period of time than 31 days. *See Askland*, 784 N.W.2d at 61 (defendant at large for about seven months); *Storkamp*, 656 N.W.2d at 540–41 (defendant at large for about two months); *Farsdale v. Martinez*, 586 N.W.2d 423, 424–25 (Minn. App. 1998) (defendant at large for about two months). And the supreme court has cautioned that a district court “may not treat bail as a way to increase the revenue of the state or to punish the surety.” *Storkamp*, 656 N.W.2d at 541–42. In this case, by focusing solely on the third *Shetsky* factor as a basis for denying ABB’s reinstatement petition, the district court penalized ABB for its perceived lack of good-faith efforts to apprehend Taylor. This factor therefore weighs in favor of reinstatement.

Second Shetsky factor: good faith of ABB as measured by Taylor's fault or willfulness in not appearing

According to the record, Taylor asked that his counsel be discharged at a hearing on February 26, appeared on February 27 and asked for a continuance, which the district court denied, and failed to appear on February 28, claiming afterwards that he was afraid to represent himself. Taylor's nonappearance on February 28 was willful. *See Shetsky*, 60 N.W.2d at 47 (concluding that defendant's nonappearance was willful when defendant absented trial because his "attorneys had told him that the trial was not going well"). A defendant's "wilful and unjustifiable default as a principal of the bail bond is chargeable to his surety." *Id.* at 48. This factor weighs against reinstatement.

Third Shetsky factor: ABB's good-faith efforts to produce Taylor

The district court denied ABB's reinstatement petition, concluding that ABB failed to provide "a sufficiently detailed account of [its] attempt to locate and secure" Taylor. The court relied entirely on the third *Shetsky* factor in denying ABB's reinstatement petition.

The record reflects that ABB was in contact by telephone with Taylor and his mother from the time that he absconded until his apprehension. While researching Taylor's location, ABB repeatedly advised Taylor and his mother that Taylor "could turn himself in, ask for the bonds to be reinstated, and still seek hiring the attorney." ABB eventually spoke with one of its bounty hunters but decided to give Taylor "just a little more time to peacefully turn himself in."

In *Storkamp*, the supreme court concluded that a district court abused its discretion when it "assumed that the defendant's bad-faith conduct automatically trumped [the

bonding company]’s good-faith apprehension of [the defendant] and the lack of prejudice to the state.” 656 N.W.2d at 542–43. The supreme court clarified that “[i]n *Shetsky*, we never attributed this type of preeminence to the bad-faith conduct of the defendant,” and stated that to affirm the court’s forfeiture would render the other factors “largely irrelevant except when the surety can prove that the failure to appear is justified.” *Id.* at 543. The supreme court reversed and remanded for reinstatement, discharge, and refund of a forfeited \$5,000 bond, emphasizing that to do otherwise “would undermine and frustrate the purposes of encouraging the surety to voluntarily surrender the bond amount, as well as the purpose of encouraging sureties to locate, arrest, and return defendants who have absconded.” *Id.*

In *Askland*, the supreme court similarly reversed and remanded for reinstatement and discharge of a forfeited bond when a district court improperly relied “most heavily” on the fourth *Shetsky* factor. 784 N.W.2d at 62–64. And in *Farsdale*, this court concluded that the record did not support the district court’s finding that a bondholder “expended only minimal efforts” to apprehend the defendant when the bondholder made “numerous attempts to locate [the defendant] through contacts with family, friends, and multi-state law enforcement,” which included a “request[] that law enforcement expand the scope of their search” to another state that “led to [the defendant]’s arrest.” 586 N.W.2d at 426.

Because ABB expended good-faith efforts to locate and apprehend Taylor, we conclude that this factor weighs in favor of reinstatement. ABB’s efforts were similar to and, perhaps, greater than, the efforts of the bondholder in *Farsdale*, in which the defendant was at large for two months. Although ABB did not successfully apprehend Taylor and

produce him for 31 days after his failure to appear in court, and although ABB might have done more to apprehend or produce Taylor, we conclude that the district court abused its discretion in denying ABB's reinstatement petition based solely on a finding that ABB did not provide "a sufficiently detailed account of [its] attempt to locate and secure [Taylor]," i.e., that ABB did not attempt in good-faith efforts to locate and apprehend Taylor. As in *Storkamp* and *Askland*, to affirm the court's bond forfeitures in this case would render three of the *Shetsky* factors meaningless.

Fourth Shetsky factor: prejudice suffered by the state

The state is prejudiced in a bond-forfeiture proceeding when "the prosecution provides evidence that it was deprived of proof or otherwise adversely affected because of [a] defendant's unexcused absence." *Storkamp*, 656 N.W.2d at 542. Here, the state did not participate in the proceedings in district court or this appeal. The state therefore has made no showing whatsoever of prejudice, and we discern none from the record. Taylor missed a hearing, but the state's prosecution of Taylor appears to have been unaffected. This factor weighs in favor of reinstatement.

ABB also argues that neither the "bail bond contract" nor "Minnesota's bail bond forfeiture statute" authorizes "forfeitures for violating conditions of release, unlawful conduct, or the nature of [Taylor]'s charge." But each of the district court's forfeiture orders cites only Taylor's failure to appear at the February 28, 2018 hearing as the reason for forfeiture. Any opinion related to ABB's argument therefore would be advisory only, and this court does not issue advisory opinions. See *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011) ("We do not issue advisory opinions, nor do we decide

cases merely to establish precedent.” (quotation omitted)). We therefore disregard this argument.

Based on our consideration of the *Shetsky* factors, we conclude that the district court abused its discretion by not reinstating ABB’s bonds. *Cf. Askland*, 784 N.W.2d at 61, 63–64 (bond company took steps to locate, apprehend, and deliver defendant, which warranted reinstatement in the absence of any evidence of prejudice to state); *Storkamp*, 656 N.W.2d at 540–41, 543 (bond company made “good-faith efforts” to track down and successfully apprehended defendant, which warranted reinstatement despite defendant’s bad faith where the state was not prejudiced).

We therefore reverse and remand with instructions to reinstate, discharge, and refund ABB’s forfeited \$40,000, \$1,000, and \$50,000 bonds.

Reversed and remanded.